

## **AUDIT GUIDELINES**

### **RECORDS EXAMINERS WILL ASK TO SEE**

While the broker must maintain legible copies of all records for a minimum of three years, the list below shows some of the records that the examiner will typically review.

1. All sales and property management escrow accounts and related records.
2. Sales Files – Pending and Closed: All documents may not apply to each file examined. The documents examined will depend on whether the broker being audited represents the listing side, selling side, or both. The contents of the file will also be affected by whether the broker being audited is a seller's agent, buyer's agent, disclosed dual agent, or transaction broker.
  - A. Listing agreement
  - B. Buyer's agency agreement
  - C. Transaction brokerage agreement
  - D. Sale contract, along with any addendum's, special agreements, or attachments
  - E. Relationship disclosure
  - F. Closing statement(s)
  - G. All other documents and correspondence related to the transaction
3. Property Management Files
  - A. Property management agreements
  - B. Leases (If executed)
  - C. Owner's statements or ledgers
  - D. Tenant's statements or ledgers
  - E. Paid Invoices and or receipts
  - F. Broker Disclosure form acknowledgements from the landlord and or tenant. (If prior to 12/31/98)
4. Continuing Education Certificates of broker and current licensees.

The outline below shows the basic guidelines used by MREC examiners when conducting random audits. The examiners are not required to follow the outline exactly, and may examine more or less than the areas listed. The Commission provides this outline to serve as a guide to licensees as they conduct their business. The Commission does not guarantee that this outline includes each and every statute and regulation that may affect a licensee.

#### **1. Audit Notification**

- A. The licensee will generally be notified by mail that they have been selected for an audit.

- B. An examiner will contact the licensee by telephone, usually within 30 days, to determine a mutually acceptable time to conduct the examination. An examiner may not be able to accommodate scheduling conflicts.

## 2. Audit Process

- A. Business activities and administrative procedures
- 1) Observe business sign (250-8.010)
  - 2) Examine licenses of brokerage, broker and affiliated licensees (250-8.060)
  - 3) Check for use and registration of fictitious name(s) (250-4.030)
  - 4) If brokerage is an entity, verify that the entity is in good standing with the Secretary of State (339.020, 339.100.2, 250-4.070)
  - 5) Verify business address and telephone number to MREC records (250-4.040)
  - 6) Determine the designated broker. (250-4.070)
  - 7) Determine the sales manager. (250-8.040)
  - 8) Determine if there are any branch offices. (250-8.030)
    - a) Who is the branch manager and how is the manager licensed? (250-8.030)
    - b) What business name is used? (250-8.010 and 250-8.030)
  - 9) Determine if there are any controlled and/or directed business arrangements? (250-8.110)
  - 10) The examiner will ask for brokerage statistics;  
Number of:
    - a) escrow accounts maintained;
    - b) pending contracts;
    - c) closed transactions in the past twelve months;
    - d) current listing agreements;
    - e) current buyer's agency agreements;
    - f) current transaction brokerage agreements;
    - g) management agreements;
    - h) owners and properties;
    - i) leases; and
    - j) units managed.

## 3. Brokerage Relationships

- A. Does the brokerage maintain a written policy statement regarding brokerage service relationships? (339.760.1)
- 1) What types of brokerage service relationships are offered?
    - a) Are relationships identified and described?
  - 2) Is designated agency offered?

- a) What policy or procedure is in place to ensure confidentiality?
- 3) Examine Broker Disclosure Form (250-8.097)
  - a) Is the form preprinted?
  - b) Do the choices marked on the preprinted form mirror the written policy statement regarding brokerage service relationships?
  - c) Has the form been modified?
- 4) Authorization for affiliated licensees to enter into brokerage service agreements on behalf of the broker. (339.780.1)
  - a) Has the designated broker provided written authorization for affiliated licensees to enter into these agreements on behalf of the brokerage?
  - b) If not, has the broker signed all brokerage service agreements?
- 5) Subagency (339.780.5)
  - a) Is the brokerage a member of a multiple listing service?
  - b) Are subagency agreements maintained with cooperating brokers?

4. Escrow/Trust Account Reconciliation: The examiner will generally examine bank records for all escrow accounts for the twelve months preceding the audit date. However, the examiner may request up to three years of records if necessary.

- A. Bank statements: Each bank statement should include the corresponding canceled checks in numerical order and the related deposit slips. If the bank returns copies of canceled checks and deposit tickets, these items should be maintained with the bank statements. If the bank does not return canceled checks or deposit tickets, the examiner will ask for copies.
- B. Checks stubs, check register or other records of receipts and disbursements.
- C. The escrow accounts are reconciled as of the examination date and compared to all liabilities. The accounts are examined for compliance with 339.105, 250-8.120, 250-8.160, and 250-8.220.
- D. All voided checks are examined. (250-8.160)
- E. All pending contracts, owner financial statements and security deposit records are examined to determine liabilities to the escrow account(s).
- F. The examiner may ask to see the brokerage's escrow account reconciliation.
- G. On property management escrow accounts, the examiner will select a sample of checks paid from the account and examine the corresponding invoices or receipts to verify actual expenses.

#### 5. Pending Contract Examination

- A. The examiner will examine all pending contracts. The corresponding brokerage service agreement(s), contract(s), addendum(s), and relationship disclosure, will also be examined.
- B. Pending contract files are examined for compliance with 339.100, 339.105, and 339.710-.860, 250-8.090, 250-8.096, 250-8.100, 250-8.110, 250-8.120, 250-8.130, 250-8.140, and 250-8.160.
- C. Pending contracts are used to determine liabilities to the sales escrow account. All funds maintained and disbursed for pending contracts are verified by escrow account records.

#### 6. Fall Through/Other Items

- A. The examiner will examine all other liabilities to the sales escrow account including fall-through contracts, disputed contracts, and closed transactions with funds in escrow. These items are examined for compliance with 339.100, 339.105, and 339.710-.860, 250-4.030, 250-8.090, 250-8.096, 250-8.100, 250-8.110, 250-8.120, 250-8.130, 250-8.140, 250-8.150 and 250-8.160.

#### 7. Closed Transactions

- A. The examiner will randomly select closed transactions from the examination period. The corresponding brokerage service agreement(s), contract(s), addendum(s), relationship disclosure, and closing statement(s) will also be examined.
- B. These closed files are examined for compliance with 339.100, 339.105, 339.150 and 339.710-.860, 250-4.030, 250-8.090, 250-8.096, 250-8.100, 250-8.110, 250-8.120, 250-8.130, 250-8.140, 250-8.150, and 250-8.160.
- C. All funds deposited and/or disbursed for closed transactions are verified to escrow account records.

#### 8. Brokerage service agreements with sellers/lessors (excluding management agreements)

- A. The examiner will examine current advertising conducted by the brokerage. The examiner will randomly select brokerage service agreements from current print and Internet advertising.
- B. If no current advertising is maintained, the examiner will randomly select and review listing or transaction brokerage agreements from all the brokerage service agreements with sellers maintained by the brokerage.
- C. Listing files are examined for compliance with 339.710-.860 , 250-8.070, 250-8.090, 250-8.140 and 250-8.160.

#### 9. Brokerage service agreements with buyers/tenants

- A. The examiner will randomly select buyer's agency and transaction brokerage agreements.
- B. These agreements will be examined for compliance with 339.710-.860, 250-8.090, 250-8.140 and 250-8.160.

## 10. Management Agreements

- A. The examiner will examine all current property management agreements. If the brokerage has management agreements which are expired or canceled but were current during the examination period, these agreements may also be examined.
- B. Management agreements are examined for compliance with 339.710-.860, 250-8.140, 250-8.160, 250-8.200, and 250-8.210.
- C. The examiner will examine property management records to determine liabilities for funds maintained on behalf of property owners. These funds could include property owner's repair funds, owner's reserve funds, rents collected and not disbursed, prepaid rents, and or security deposits. These liabilities will be compared to current balances in the property management and or security deposit escrow account(s).

## 11. Leases

- A. The examiner will examine a sample of any leases maintained and compare the security deposit liability per the lease to the liability per the brokerage records. If the brokerage does not maintain security deposit liability records or if the brokerage maintains inadequate records, all leases will be examined to obtain security deposit liabilities.
- B. Written relationship disclosures will be examined on all leases entered into after 9/1/98. (250-8.095 and 250-8.096).
- C. Leases negotiated on behalf of landlords or tenants may be examined, with corresponding brokerage service agreements, for compliance with 339.710-.860, 250-4.030, 250-8.096 and 250-8.160.

## FREQUENTLY ASKED QUESTIONS

### 1. Q. What happens once the examiner leaves the broker's office?

A. The examiner will prepare a detailed written report and then submit both the audit workpapers and the report to the examination supervisor. Once the supervisor determines no further documentation or clarification is needed, the report is finalized and placed on the Commission's next meeting agenda. The agenda is sent to the Commissioners about two weeks before the meeting. Each audit on the agenda is reviewed at the meeting and the Commission votes on the appropriate action to be taken. Action can range from a letter advising that no violations were noted to revocation of license.

### 2. Q. How long before the broker hears from the Commission concerning the audit?

A. It varies. Depending on when the audit is completed, whether the examination supervisor requests additional documentation from the examiner, and when the agenda must be prepared and mailed, typically 3 - 5 months will pass before the broker hears from the Commission.

**3. Q. How will I know if the problems noted by the examiner are major or minor as compared to other audits?**

A. The examiner does not make this determination and will not compare your audit with other audits conducted. The examiner is the fact finder for the Commission. It is the Commission's responsibility to determine whether the items noted in the examination report are significant and warrant pursuit of formal discipline.

**4. Q. How should the broker handle an overage or shortage in the escrow account(s)?**

A. The broker should identify the source of the overage or shortage and immediately take corrective action.

**5. Q. Should the broker immediately start correcting other problems found in the audit?**

A. It depends. While the examiner typically goes over the noted violations at the end of the fieldwork, because the audit is not considered complete until reviewed by the Commission, the final report may differ slightly from the exit interview between the examiner and broker. Therefore, the broker must decide if the issues discussed warrant immediate action and if new procedures should be implemented to ensure future compliance.

While the examiner may be able to give suggestions for future compliance, the examiner will not give specific instruction or demand that actions be taken. This is not within the scope of the examiner's duties or powers.